

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

FRED CLOUD,

Petitioner,

v.

Civil Action No. 1:18-cv-229
(Judge KleeH)

PAUL ADAMS, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 40],
GRANTING RESPONDENT'S MOTION TO DISMISS [DKT. NO. 21],
DENYING AS MOOT MOTION TO STRIKE [DKT. NO. 39], AND
DISMISSING WITHOUT PREJUDICE THE PETITION [DKT. NO. 1]

On December 26, 2018, the pro se Petitioner, Fred Cloud ("Petitioner"), an inmate at FCI Hazelton in Bruceton Mills, West Virginia, filed a petition in this action pursuant to 28 U.S.C. § 2241 [Dkt. No. 1]. Petitioner challenges the validity of his sentence and the loss of Good Conduct Time ("GCT") associated with a prison disciplinary hearing.¹ Petitioner also filed a motion to exceed page limitations [Dkt. No. 2] and a motion to supplement his petition [Dkt. No. 8]. The motion to file excess pages and motion to supplement were granted [Dkt. Nos. 9, 10].

Petitioner wrote a letter to the Court on October 23, 2019

¹ On the Petition's face, Petitioner represents that he is also challenging his conviction, but the Petition itself raises no challenge to the offense of conviction.

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[Dkt. No. 12], which was construed as a second motion to supplement and was granted [Dkt. No. 14]. After the Respondent filed a motion to dismiss with a memorandum in support [Dkt. Nos. 21, 22], a Roseboro Notice was issued to Petitioner [Dkt. No. 23] and Petitioner filed a reply to the motion to dismiss [Dkt. No. 27]. Respondent then filed a reply together with a motion to seal and certain exhibits [Dkt. No. 32]. Petitioner filed a motion to strike the Respondent's reply [Dkt. No. 39].

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On July 29, 2020, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss the petition without prejudice and deny as moot Petitioner's motion to strike [Dkt. No. 40].

The R&R also informed the parties that they had fourteen (14) days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." It further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." The docket reflects that Petitioner accepted service of the R&R on August 14, 2020 [Dkt. No. 42].

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Petitioner filed a motion to extend the time by which to file objections to the R&R [Dkt. No. 43] and the motion was granted, allowing Petitioner until August 31, 2020 to file objections [Dkt. No. 44]. The docket reflects that Petitioner accepted service of that order [Dkt. No. 45]. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. This Court agrees with the R&R findings that it lacks jurisdiction to address two of the grounds identified in the petition because Petitioner cannot establish that relief under 28 U.S.C. § 2255 is inadequate or ineffective under United States v. Wheeler, 886 F.3rd 415, 429 (4th Cir. 2018), and because Sessions v. Dimaya, 138 S.Ct. 1204 (2018) is

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inapplicable to Petitioner's offense of conviction [Dkt. No. 40 at 13-15]. Petitioner's third ground for relief is moot because the Bureau of Prisons already expunged the challenged Incident Report and restored Petitioner's GCT [Id. at 16]. Accordingly, upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [Dkt. No. 40]. The Respondent's motion to dismiss [Dkt. No. 21] is **GRANTED** and the Petition [Dkt. No. 1] is **DISMISSED WITHOUT PREJUDICE**. The motion to strike [Dkt. No. 39] is **DENIED AS MOOT**. The Court further **ORDERS** that this matter be **STRICKEN** from the Court's active docket and **DIRECTS** the Clerk to enter judgment in favor of Respondent.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to the pro se Petitioner via certified mail, return receipt requested.

DATED: September 10, 2020



THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE